



LUND UNIVERSITY

SOCIAL NORMS AND INTELLECTUAL PROPERTY. Online norms and the European legal development

Svensson, Måns; Larsson, Stefan

2009

[Link to publication](#)

Citation for published version (APA):

Svensson, M., & Larsson, S. (2009). *SOCIAL NORMS AND INTELLECTUAL PROPERTY. Online norms and the European legal development.* (Research Report in Sociology of Law; Vol. 2009:1). Department of Sociology of Law, Lund University.

Total number of authors:

2

General rights

Unless other specific re-use rights are stated the following general rights apply:

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Read more about Creative commons licenses: <https://creativecommons.org/licenses/>

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

LUND UNIVERSITY

PO Box 117
221 00 Lund
+46 46-222 00 00

Måns Svensson & Stefan Larsson

SOCIAL NORMS AND INTELLECTUAL PROPERTY

Online norms and the European legal development

LUND UNIVERSITY

This report is the result of study that was performed in January and February 2009. It was presented and reviewed at the Annual Meeting of the Law and Society Association: Law, Power, and Inequality in the 21st Century in May 2009.

The study empirically examined, or rather examined the lack of, social norms opposing illegal file sharing. A total of over 1,000 respondents have answered the questionnaire. Along with the social norm indicators, the study maps out relevant questions regarding internet behaviour in this field, such as the will to use anonymity services and the will to pay for copyrighted content. These results are compared and contrasted with the legal development trend in European law in internet and file sharing related matters, as well as the Swedish implementation of this development, as a member of the European Union. This includes the Intellectual Property Enforcement Directive (IPRED), the Directive on Data retention as well as the implementation of INFOSOC.

Svensson and Larsson in *Social Norms and Intellectual Property – Online norms and the European legal development* consequently portrays the social norms on the one hand and the legal development on the other, and the overarching question of the report therefore addresses the correlation of these two. Do the social norms amongst 15-25 year olds match the legal regulation, as well as the regulatory trend on this field? If not, how can this be understood or explained? The study shows that the cybernorms differ, both in inherent structures and origin, from current legal constructions.

This study is part of Cybernorms – norm creation processes in young net cultures, a research project that explores the norm creating processes (social and legal) that appear in the wake of the changing information technology. The project is run by researchers at the Department of Sociology of Law at Lund University and is funded by The Knowledge Foundation (Stiftelsen för kunskaps- och kompetensutveckling). The members of the project run a scientific blog at www.cybernormer.se.



LUND UNIVERSITY

ISBN 91-7267-305-2

ISSN 1404-1030

Social Norms and Intellectual Property Department of Sociology of Law
Research Report in Sociology of Law
2009:1

SOCIAL NORMS AND INTELLECTUAL PROPERTY

Online norms and the European legal development

Copyright © Måns Svensson and Stefan Larsson 2009
Sättning Stefan Larsson
Print MEDIA-TRYCK, Lund 2009
ISBN 91-7267-305-2

Content

Preface.....	5
Introduction: Social change and legal trends.....	7
Copyright.....	11
Copyright legislation in Sweden.....	12
The European legal trend regarding copyright and internet control.....	15
Stronger copyright. The Infosoc directive.....	15
Enforcing copyright: The IPRED directive	17
Combating "serious crime": Data retention directive.....	19
The Telecoms Reform Package	22
Theory: the concept of Norms.....	23
Three essential attributes.....	24
Law in books and norms in action	26
Scientific method: studying social norms	29
Respondent selection	30
Processing of the respondent survey data.....	33
Calculation of social norms expressed in mathematical terms	41
The study of norms – presenting data	43
Background respondent data.....	43
Norms capacity to influence towards observance of law.....	45
How do the respondents reason?	54
Conclusions and discussion.....	59
References	63
Legal references	63
Literature	65
Other sources.....	67

Preface

This report is the result of study that was performed in January and February 2009. It was presented and reviewed at the Annual Meeting of the Law and Society Association: *Law, Power, and Inequality in the 21st Century* in May 2009.

The study empirically examined, or rather examined the lack of, social norms opposing illegal file sharing. A total of over 1,000 respondents have answered the questionnaire. Along with the social norm indicators, the study maps out relevant questions regarding internet behaviour in this field, such as the will to use anonymity services and the will to pay for copyrighted content. These results are compared and contrasted with the legal development trend in European law in internet and file sharing related matters, as well as the Swedish implementation of this development, as a member of the European Union. This includes the Intellectual Property Enforcement Directive (IPRED), the Directive on Data retention as well as the implementation of INFOSOC.

The report therefore portrays the social norms on the one hand and the legal development on the other, and *the overarching question* of the report therefore addresses the correlation of these two. Do the social norms amongst 15-25 year olds match the legal regulation, as well as the regulatory trend on this field? If not, how can this be understood or explained? The study shows that the cybernorms differ, both in inherent structures and origin, from current legal constructions.

Lund, November 2009

Måns Svensson and Stefan Larsson

Introduction: Social change and legal trends

The sharing of computer programs, movies and music over the Internet marks an all time high in the persistent controversy between intellectual property owners and reproduction technologies. On the one hand the copyright lobbyists have managed to produce numerous political and legal victories over the last decade, on the other hand, file sharing has gradually become a natural element in the everyday life of today's younger generations. At present, the magnitude of the expanding gulf between traditional society's intellectual property right complex – *the law in books* – and the young E-communities budding social norms – *the norms in action* – goes beyond the prosaic judicial aspects. Apart from the obvious emergence of a new form of legal pluralism, this kind of gap runs the risk of disintegrating society and undermining governing legitimacy.

Sociology of law studies matters that pertain to the interplay between rule of law and statutes on the one hand and other social structures on the other hand. In this study, we focus on the legal development in Europe and the current expansion towards surveillance and increased sanctions in cases of file sharing of copyright protected material on the internet. Our ambition is to correlate the legal development with the social norms that exist in this field. The definition of *the norm concept* we use is based on having identified three essential attributes, which describe the nature of these norms. These are the “ought” dimension (the imperative), the “is” dimension (social reproduction) and the fact that the norm comes from the individual's perception of the expectations of her social environment – which means that norms are dependent on various cognitive processes (Hydén & Svensson, 2008).

Our study on social norms address file sharing and the expectations the social environment has on the respondents regarding illegal file sharing and in turn the respondents view of the social environment, and to what extent these opinions matter to the respondents. A total of over 1,000 respondents answered the questionnaire that was conducted in January-February 2009. Along with the social norm indicators, the study maps out relevant questions with regards to the internet

behaviour in this field, such as the will to use anonymity services and the will to pay for copyrighted content. These results are compared and contrasted to the legal development trend of European law in internet and file sharing related matters, as well as the Swedish implementation of this development, being a member of the European Union.

The report therefore portrays the social norms on one hand and the legal development on the other, and the overarching question of the report therefore regards the correlation of these two. Do the social norms amongst 15-25 year olds match the legal regulation, as well as the regulatory trend on this field? If not, how can this be understood or explained?

In 2001 the European Community Directive on Copyright in the Information Society, *the INFOSOC Directive*, was passed which included narrow exemptions to the exclusive rights of the rights holder as well as protection for "technological measures" (art 6). This meant that more actions were criminalized and that the copyright regulations around Europe generally expanded and became stronger.

In April 2004 the EU passed the Directive on Enforcement of Intellectual Property Rights, the so called *the IPRED directive*, following what has been called "heavy-handed influence of the American entertainment industry" (Kirkegaard 2005). It had been set up due to that it is "necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied effectively in the Community. In this respect, the means of enforcing intellectual property rights are of paramount importance for the success of the Internal Market." (Recital 3). The IPRED directive also refers to that all Member States are bound by the Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement), which aligns the global regulatory connection on copyright between nations, the EU as well as international treaties.

After the bombings in Madrid in March 2004 the work started on what later became the so called *Data retention directive* in order to force internet service providers and mobile operators to store data in order to fight "serious crime".¹ This was heavily criticized by both the Article 29 Data Protection Working Party as well as the European Data Protection Supervisor for lacking respect for the fundamental human rights. The question still remains in the Swedish implementation whether or not this can or will be attached to copyright crimes but it will nevertheless force ISP:s to store data and therefore support copyright holders retrieval of this data according to the IPRED legislation.

¹ DIRECTIVE 2006/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

Recently it is *the European Telecoms Reform Package* that has been heavily debated. It was presented to the European Parliament in Strasbourg 13 November 2007 but voted upon 6 May 2009.

This cluster of legislation seeking to harmonize the national legislations of the European Union all point to the obvious trend of adding control over the flows of the internet. One purpose is to show that the digital context when it comes to file sharing is not a milieu without norms or even processes of norm creation. However these cybernorms differ, both in inherent structures and origin, from current legal constructions. Before turning to the social norm study we first need to sort out the core legislation that illegal file sharing relates to, namely copyright, as well as the legal trend within the European Union relating to copyright and in its extension, identity control on the internet.

Copyright

The development of copyright is directly connected to contemporary technological development. Copyright is part of what is called intellectual property, which also includes, for instance, patent and trademark. Copyright is the right that authors, composers, artists and other originators have to their literary or artistic work. This right needs no registration, unlike innovations that require patents. This is a key idea of *the Berne Convention for the Protection for Literary and Artistic Works*.² As put by WIPO, the World International Property Organization:

”Copyright is the legal protection extended to the owner of the rights in an original work that he has created. It comprises two main sets of rights: the economic rights and the moral rights.”³

The *economic rights* are the rights of reproduction, broadcasting, public performance, adaptation, distribution and so on and the *moral rights* - droit moral - include the author's right to object to any distortion, mutilation or other modification of his work that might be harmful to his honour or reputation. The national copyright regulations are connected to international treaties and, in the Swedish case, also to EU law. The Berne convention, for instance, is an international agreement, and therefore not EU law, but the wide ratification of the treaty has contributed to harmonizing or streamlining the national regulations on copyright. So, while presenting the contemporary European copyright as connected to the Directive on Copyright in the Information Society (the INFOSOC Directive) in section 3.1 below, the following will briefly outline the context of international treaties on copyright and then the Swedish version of copyright regulation.

² Berne Convention for the Protection for Literary and Artistic Works, last amended at Paris on September 28, 1979. Sweden signed on the 1 August 1904 and has adopted all the amendments of the Convention after that. Agreement on Trade-Related Aspects of Intellectual Property Rights signed in Marrakech, Morocco on 15 April 1994.

³ http://www.wipo.int/about-ip/en/about_collective_mngt.html#P17_536 visited 21 May 2009.

The aforementioned Berne Convention is an international agreement that has been widely spread to include 164 members in 2009, including China (1992), USA (1989), Russia (1995) and Sweden (1904).⁴ The convention puts up a few minimum demands on what the national regulations should include, for instance the time of copyright protection. The other long-standing treaty is the Paris convention for the Protection of Industrial Property from 1883 which in 2009 included 173 members. The Berne and the Paris Conventions are administrated by WIPO, a 'Specialized Agency' under United Nations. In December 1996 the Berne Convention was complemented with the *WIPO Copyright Treaty* (WCT) that was in force by 6 March 2002 and is now ratified by 70 countries, including USA, China and recently Russia, but not Sweden. The WCT aim is said to be to update copyright protection to the new digital conditions of communication and "Emphasizing the outstanding significance of copyright protection as an incentive for literary and artistic creation" (see Preamble of WCT). *The TRIPS Agreement* – the Agreement on Trade-Related Aspects of Intellectual Property Rights – has its foundation in the Berne and Paris Conventions, but reaches further (Koktvedgaard, Mogens & Levin, Marianne 2004 p 39-44). The TRIPS Agreement is linked to membership of WTO, which is an organ under UN.

The general length of copyright protection is 70 years after the death of the creator (although the Berne Convention states 50 years after the creator's death as a minimum in article 7). For the related rights of performers, the producers of phonograms (such as musical albums) and broadcasting organizations, 50 years from when they were made (related rights), which is covered internationally by the so called *Rome Convention*.⁵ This Convention was adopted in 1961 (adopted by, for instance Russia, USA and Sweden), and the TRIPS Agreement incorporates or refers to this.

Copyright legislation in Sweden

The length of standard copyright protection in Sweden, is for the entire life of the creator and 70 years afterwards (Art 43, Swedish Copyright Act 1960: 729), and for the so called related right, 50 years from when the recording etc. was made

⁴ http://www.wipo.int/treaties/en/statistics/StatsResults.jsp? treaty_id=15 visited 6 May 2009.

⁵ The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

(chapter 5), although the act is complex on the details of this matter and in need of editing in this chapter (Koktvedgaard & Levin 2004 p 146).

A fundamental purpose expressed in the Swedish copyright legal tradition is that the legal order should protect creativity and that originators are ensured a control over the economic use, besides the non-profit interests associated with the created work (which can be referred to the preparatory work of the Swedish Copyright Act SOU 1956:25 p 487). This is, in Sweden, supported by the protection that the Constitution (Regeringsformen) gives to authors, artists and photographers according to RF 2:19. The primary purpose can thereby be said to give the originator compensation for the effort that been put in to the artistic work. The compensation is not intended to only apply to the results of the work itself, but also for the investments that are made in the form of experience and that can be desired for third party (Nordell 1997, p 17). The two “exclusive rights” of the Swedish copyright law are the reproduction right and the right of authorising communication to the public. Many national copyright legislations allow an exception for *private use* when it comes to reproduction.

The concepts and specific terminology of Swedish copyright originates from the preparatory works of 1956 prior to the Copyright Act of 1960.⁶ Of course, this has been changed continuously over the years, but many of the terms and fundamental conceptions have stuck.

The very much amended Swedish copyright law from 1960 is a legal regulation that even legal experts think is complex. In fact, when the additions were made to the law in 2005 (to harmonize with the INFOSOC directive) the expert council on legal construction in Sweden – Lagrådet – concluded that it was desirable to do a complete editorial review of the Copyright Act instead of implementing the “patchwork” that the changes in the law now meant. The Council however stated that it understood the hurry at the time to implement the directive (Prop 2004/05:110, appendix 8, p 558).

⁶ The Swedish Act on Copyright in Literary and Artistic Works – Act 1960:729, of December 30, 1960.

The European legal trend regarding copyright and internet control

The following presentation focuses on the three main directives related to copyright and its enforcement, responding to the growth of the online world. As a case study, the Swedish implementation of the three directives is shown. Lastly, the very recent debate of the European Telecoms reform package shows both the controlling legislative trend as well as the first example of a social movement connected to an online context that actually managed to influence the legislative process on an EU level in the first half of 2009.

Stronger copyright. The Infosoc directive

The initial proposal for the European Community Directive on Copyright in the Information Society, *the INFOSOC Directive*, was tabled in December 1997,⁷ and the directive passed in 2001.⁸ This was following on the Green Paper on Copyright and Related Rights in the Information Society from July 1995.⁹ One of the original

⁷ European Commission, *Proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society*, Brussels, 10 December 1997, COM(97) 628, Official Journal C108/6 of 7 April 1998.

⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

⁹ European Commission, *Green Paper on 'Copyright and Related Rights in the*

two purposes of the directive was to bring the laws on copyright and related rights in the European Union in line with the WIPO 'Internet Treaties', in order to set the stage for joint ratification of the Treaties by the Member States and the European Community. The second goal of the Directive was to harmonise certain aspects of substantive copyright law across the European Union. The directive states its importance as regards to the "information society" in article 1:

"1. This Directive concerns the legal protection of copyright and related rights in the framework of the internal market, with particular emphasis on the information society."

The INFOSOC directive included narrow exemptions to the exclusive rights of the rights holder as well as protection for "technological measures" which often are referred to as Digital Rights Management, DRM (art 6). This meant that more actions were criminalized and that the copyright regulations around Europe generally expanded and became stronger. The directive has been criticized for focusing on the aggregators' rights rather than the creators'. The Intellectual Property Law Professor P. Bernt Hugenholtz wrote, after the Council of Ministers finally reached political agreement on the INFOSOC Directive:

"It does not deal with several of the crucial questions raised in the Green Paper: applicable law, administration of rights, and moral rights – a staple hot potato on the Brussels menu. In fact, the Directive does not do much for authors at all. It is primarily geared towards protecting the rights and interests of the 'main players' in the information industry (producers, broadcasters and institutional users), not of the creators that provide the invaluable 'content' that drives the industry." (*Hugenholtz 2000, p 501-502*).

The directive however, was implemented among the Member States, mainly between 2003 and 2004, with Denmark, the Czech republic and Greece being early and Sweden, Finland, Spain and France being late (Westkamp 2007, p 79-81).

Swedish implementation

The original last date of implementation for the INFOSOC Directive was 22 December 2002, but only Denmark and Greece had implemented it by this time. In Sweden, the proposal from the governmental commission (the SOU) was presented in 2003.¹⁰ In the following governmental legal proposal 2004/05:110,

Information Society', COM(95) 382 final of 19 July 1995.

¹⁰ SOU 2003:35 (Upphovsrätten i informationssamhället - genomförande av direktiv 2001/29/EG, m.m.).

legal changes were accepted by Parliament and came into force by 1 July 2005.¹¹ The INFOSOC directive (2001/29/EG) from 2001 caused debate in Sweden, and the implementation of it was delayed. The changes in the Swedish Copyright Act meant a few steps towards a stronger copyright, with more actions being criminalized in relation to sharing files via the Internet, and they were in force from 1 July 2005 (SFS 2005:360, SOU 2003:35, Prop 2004/05:110, Larsson 2005 p 28-29). Sweden had received a remark from the European Court of Justice for the delay that already had elapsed (Larsson 2005 p 28-29).

The development of technical safety measures was seen as a key issue as late as in 2007, when an investigation regarding music and movies on the Internet was conducted by the governmentally appointed Cecilia Rehnfors (Ds 2007:29, p 16). This investigation, which followed the implementation of INFOSOC directive but formally had nothing to do with it, concluded that the legal services on the Internet often had an unsatisfactory range of content to offer, but also launched the idea that the Internet operators should be given a responsibility to control that their subscribers did not participate in copyright infringements. This proposal was met with great opposition from the operators (Dagens Nyheter 3 Sep 2007). The increased operator responsibilities had been proposed by copyright organizations, such as IFPI (Ds 2007:29, p 207). The proposals regarding ISP:s possibility and obligation to shut off subscribers from the internet connection when it is used for repeated breaches of copyright and related rights have been considered in the preparatory work for the implementation of the IPRED directive, see below (and Prop. 2008/09:67 p 71-72 and chapter 8).

Enforcing copyright: The IPRED directive

The Commission presented a Communication in November 2000, announcing a series of practical measures intended to improve and step up the fight against counterfeiting and piracy in the single market. As part of these measures, the Commission forwarded a proposal for a Directive harmonising the legislation of Member States to strengthen the means of enforcing intellectual property rights. Even then, around the time the IPRED directive was approved by the European Parliament, by 9 March 2004, it caused a stir amongst civil groups in the US and Europe (Kirkegaard 2005, p 489).¹² The Directive deals with the enforcement of

¹¹ Prop 2004/05:110 (Upphovsrätten i informationssamhället – genomförande av direktiv 2001/29/EG, mm.), SFS 2005:359. See also Prop. 2004/05:135 that also changed some parts of the Swedish copyright law from 1 July 2005 (SFS 2005:360).

¹² DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE

intellectual property and industrial rights. Recital 4 of the IPRED directive explicitly relates it to copyright legislation according to the TRIPS agreement.

"At international level, all Member States, as well as the Community itself as regards matters within its competence, are bound by the Agreement on Trade-Related Aspects of Intellectual Property (the "TRIPS Agreement"), approved, as part of the multilateral negotiations of the Uruguay Round, by Council Decision 94/800/EC 1 and concluded in the framework of the World Trade Organisation." (Recital 4 of Directive 2004/48/EG)

In short, one of the most debated issues is the fact that the directive gives the copyright holders the right to by a court decision retrieve the identity information behind an IP address at a certain time when they "have presented reasonably available evidence sufficient to support its claims" (art 6.1). The "competent judicial authorities" may then order the ISP:s to release such information.

The IPRED directive is a minimum directive, meaning that the Member states can set up national conditions that are even more favourable to the right holders than the directive prescribes (art 2).

Swedish implementation

The so called "IPRED-law" meant that most of the provisions in the IPRED directive was implemented in Sweden by 1 April 2009. Some aspects are however yet to be implemented, which the European Court of Justice has declared in a sentence 15 May 2008 (Case C 341/07).

The implementation of the IPRED directive in Sweden has been an extremely debated issue in Sweden, there has been talk about an increase in the use of online anonymity services for instance, and a number of operators stating that they discard the information that IPRED is aiming for as early as possible, and even initiatives within the online communities of creating new encrypted file sharing services.¹³

COUNCIL OF 29 APRIL 2004 ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS.

¹³ Prop. 2008/09:67 Civilrättsliga sanktioner på immaterialrättens område - genomförande av direktiv 2004/48/EG. See Svenska Dagbladet 28 April 2009. "Nätoperatörerna kringgår inte Ipred" http://www.svd.se/nyheter/inrikes/artikel_2805959.svd. See also Cybernormer.se 28 April 2009: <http://cybernormer.se/2009/04/28/fler-stora-operatorer-bygger-runt-ipred/>

Combating "serious crime": Data retention directive

In December 2005 the European Parliament passed the so called *Data retention directive*.¹⁴ The directive aims at harmonizing the regulation of the member states regarding telephone operators, internet service providers to retain personal data. The data retention directive amends Directive 2002/58/EC to force operators of public telephone services and internet service providers, ISP:s, to keep data such as the calling number, the user ID, the identity of a user of an IP address for a period of between six months and two years. The aim is to:

"...ensure that the data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law." (Art 1, section 1).

The former Directive, 2002/58/EC, established as a principle of law that traffic data must be erased as soon as storage is no longer needed for purposes related to the communication itself (including billing purposes). The Data retention directive means a breach of principle. The European Data Protection Supervisor, the EDPS, was harsh in its critique on the proposal, calling it illegal:¹⁵

"It is essential to the EDPS that the proposal respects the fundamental rights. A legislative measure which would harm the protection guaranteed by Community law and more in particular by the case law of the Court of Justice and the European Court of Human Rights is not only unacceptable, but also illegal. The circumstances in society may have changed due to terrorist attacks, but this may not have as an effect that high standards of protection in the state of law are compromised. Protection is given by law irrespective of the actual needs of law enforcement. Moreover, the case law itself allows for exceptions, if necessary in a democratic society." (Underlining in original text. EDPS Opinion 26 September 2005, section 8)¹⁶

¹⁴ DIRECTIVE 2006/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

¹⁵ The EDPS is an independent supervisory authority devoted to protecting personal data and privacy and promoting good practice in the EU institutions and bodies.

¹⁶ Opinion of the European Data Protection Supervisor on the proposal for a Directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC (COM(2005) 438 final), published on www.edps.eu.int

Critique of this type came also from the Article 29 Data Protection Working Party, which is the independent EU party for data protection of privacy.¹⁷ It concluded regarding the directive that:

”...the decision to retain communication data for the purpose of combating serious crime is an unprecedented one with a historical dimension. It encroaches into the daily life of every citizen and may endanger the fundamental values and freedoms all European citizens enjoy and cherish.” (Opinion 3/2006 654/06/EN WP 119, p 2)

The Data Protection Working Party continues by stating that it is ”of utmost importance that the Directive is accompanied and implemented in each Member State by measures curtailing the impact on privacy” (Opinion 3/2006 654/06/EN WP 119, p 2).

The Data retention directive was passed 14th December 2005. The directive states that the member states should implement the directive by 15 September 2007. When it comes to internet access, e-mail and internet telephony, there is a possibility to postpone the implementation. This possibility has been used by Sweden (see SOU2007:76 p 17-18).

The important choices for the member states to make when implementing the directive, regard *the time* of storing data – the directive sets the framework for periods of not less than six months and not more than two years from the date of the communication – and exactly *what* data should be stored, and *who* should be obliged to retain the data (should small operators have to?). The question of who should pay for the data retention and the delivery of data when requested has been very much debated, and different Member states have reached different solutions. The key question here, in relation to copyright and the enforcement of it, is in what way the implementation of the Data retention directive will connect to the implemented IPRED directive.

Although the data retention directive aims at aiding prosecution in criminal cases it will likely support the copyright holders interests groups civil cases via Ipred as well. The copyright owners interest groups collect IP numbers that they consider violate the rights of their clients. In order to connect the IP number to the persons behind the actions the copyright interest groups need to go to the one that has access to this link, the ISP. Since present legislation on ISP responsibilities focus the integrity of the subscribers, the ISP:s generally do not store the data for a longer period. Implementing the directive on data retention therefore helps the case of the copyright holders in terms of changing the responsibilities for the ISP:s, from being

¹⁷ Article 29 Data Protection Working Party was installed according to article 29 in directive 95/46/EC. Its duties are described in article 30 of directive 95/46/EC and article 15 in directive 2002/58/EC.

prohibited to store the data unnecessarily to be obliged to store the data for a longer time.

When it comes to the “serious crimes”, it is not only about the times of storage but about for what levels of criminal penalties that will allow the police get hold of and to use the subscriber identification. Where this line should be drawn in Sweden is right now under investigation.

Swedish implementation

The directive on data retention is yet to be implemented in Sweden. The commissioner Gudrun Antemar presented the preparatory work in 7 November 2007 (SOU 2007:76).¹⁸ Anonymous communications are not criminalised in the governmental report, such as through mobile pay cards, but a peculiarity in relation to protection of privacy can be found in the fact that the directive should be implemented not as *an act* but *an ordinance*. The importance of this is that, if regulated through an ordinance it is easier to change the regulation afterwards, than if regulated in an act. The acts require to be voted upon in Parliament, but the ordinances can be changed by the government alone. This means that when the directive has been implemented through an ordinance, the details of it, such as the time for data retention, can be changed by the government without a vote in Parliament.

The Swedish preparatory work suggests a time for retention to one year (SOU 2007:76). In Sweden the regulation today regarding the protection of privacy in electronic communication is mainly found in the sixth chapter of the Electronic Communications Act (2003:389). Regarding the traffic data, section 6 states that “Traffic data that is required for subscriber invoicing and payment of charges for interconnection may be processed until the claim is paid or a time limit has expired and it is no longer possible to make objections to the invoicing or the charge”. The legislation emphasizes the importance of not storing the data too long, for the sake of privacy protection, following from directive 2002/58/EC which the Data retention directive amends.

The legal proposal was to be expected in June 2009, but has been postponed and will not be released before the election of 2010. It will present the governmental opinion on the time limits of data retention, what data should be stored, who should be obliged to retain the data as well as the financial costs for the data retention. The question regarding the definition of “serious crime” will however not be solved by the proposal since this is investigated in a parallel commission on Police method.

¹⁸ *Lagring av trafikuppgifter för brottsbekämpning* SOU 2007:76.

The Telecoms Reform Package

Recently it is the European Telecoms Reform Package that has been heavily debated. It was presented to the European Parliament in Strasbourg 13 November 2007 but voted upon 6 May 2009. This is a cluster of directives that are being prepared (COM (2007) 697)¹⁹ which to a great extent puts the role of the Internet Service Providers in focus. One battle has regarded whether or not it should be possible to regulate the possibility to disconnect internet users based on suspected copyright violations before and until they are proven guilty in court. This was the case in France just recently, with the so called HADOPI-law. It was also the French representatives that wanted to withdraw Amendment 138, the amendment ensuring that a court trial precedes a possible disconnection. Another issue regards the proposition to make it possible for ISP:s to decide which web pages users are allowed to visit. The battle within the process has regarded the strength of the protection of individuals that should be included in the Telecom reforms package. Net activist groups have criticized the unrevised reform package for leading to a “cable TV internet”, deconstructing net neutrality and to a too high extent see internet users as mere “consumers”.

The presentation above on the current European legal trend focuses directives related to copyright and its enforcement responses to the online world. As a case study, the Swedish implementation of the three directives has been shown. This cluster of legislation will now form the context for the report’s study on social norms and file sharing behaviour. However, in order to study norms, the concept has to be explained and developed.

¹⁹ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorization of electronic communications networks and services.

Theory: the concept of Norms

Sociology of law studies matters that pertain to the interplay between legal rules and decisions on the one hand and other aspects of society on the other hand (Aubert 1972, p. 13; Mathiesen 1973, p. 10; Hydén 1978, p. 26; Stjernquist & Widerberg 1989, p. 7). In this study, we focus on the legal development in Europe and the current expansion towards increased surveillance and sanctions in cases of file sharing of copyright protected material on the internet. Our ambition is to correlate the legal development with the social norms that exist in this field.

The main thrust of sociology of law at Lund University, where we operate, connects studies of legality and society to the orientation of social studies that Mathiesen (1973) has referred to as the norm model within social studies. This is an orientation that is based in a functionalist tradition. Emile Durkheim's classical theories on social coercion and social facts comprise an important source of inspiration – partly because they deal with creating social changes through law and other norms, but also because they so distinctly state norms as being empirical entities (norms as "things") which can be studied scientifically. The theories developed in Lund however, do not follow orthodox praxis in any Durkheimist or functionalistic meaning. Partly because Sociology of Law at Lund University concerns itself with and strives to include a more deductive perspective and an understanding of social values systems which are not obviously connected to empirical reality; but perhaps, even more importantly, by illuminating the role in social processes at the individual-level. Therefore, we employ a study model that has the capacity to combine the individual-level with an understanding of the concepts of "Is" and "Ought" and their role in social norm structures.

Three essential attributes

At the heart of this model lies a norm concept that by its very definition incorporates these separate dimensions. The definition of the norm concepts we use are based on having identified three essential attributes, which describe the nature of these norms (Hydén & Svensson, 2008). The first essential attribute is tied to the “ought” dimension of the norm and simply dictates that norms constitute imperatives (directions for action); the second essential attribute is bound to the “is” dimension and stipulates that norms are socially reproduced and thus can be studied empirically; The third essential attribute is that the norm actually comes from the individual’s perception of the expectations of her social environment – which means that norms are dependent on various cognitive processes.

Norms can be communicated and preserved through all the assorted methods of communication and information storage available to humans. Originally, this information was stored primarily in people’s brains and was reproduced verbally. Today, we also amass norms in both electronic and printed media and may communicate them through mass-media. The pivotal point is that in each individual’s decision-making there exist contemporary norms external to the individual, in which the process is activated.²⁰ This is because the norms represent the influence of the social environment in each individual’s decision-making. Each individual can, however, be a part of her social environment and the associated social pressure (and thus perpetuate norms) whilst other individuals are included in the decision-making.

Emilé Durkheim asserts that Sociology’s claim to its own territory is based in the existence of a domain of reality that pre-existing sciences and forms of knowledge have failed to understand.

The domain of reality that Durkheim alludes to is society, which thusly also is Sociology’s particular field of study. Society is an objective reality which exists, independent of and without, the individual members of society. Durkheim calls the expressions of this objective reality, social facts. Thus, Durkheim’s perspective is in many ways similar to the Sociology of Law concept in his views on social facts (see Hoff & Svensson 1999).

Durkheim believes that social facts exert coercion on individuals – and that this coercion constitutes the conditions for organized social life. Without this social coercion, human interaction would be characterized by a chaotic struggle between egoistical individuals. Durkheim dissects social coercion into three basic structures

²⁰ When referring to individual norms within Theory of Planned Behaviour, the individual’s subjective perception regarding the norms of the social environments is inferred. See section 5.0 below.

– not explicitly nor in any model. Willy Guneriusen however, shows in his analysis of Durkheim (1999, p. 79ff.), how Durkheim in actual fact indicates (a) materialistic and structural aspects of social coercion, (b) values and motivation aspects, (c) and finally, cognitive and cultural aspects of social coercion that society exerts through social facts.

Durkheim's categorizations of social coercion correspond well to the three elements which we address as being the structures from which norms emanate. Durkheim claims that social facts fulfill a necessary social function, which he describes in *Rules of Sociological Method* (1991, p. 22) accordingly:

“...They carry an imperative and coercive force, through which they wield pressure on him, whether he wants it or not. When I of my own free will surrender to this coercion, it is probably not noticed at all, or else very little, as I reap benefits from it. None the less, it remains an inherent property of these facts and the proof lies in its illumination when I try to resist it”.

Durkheim believed that these social facts/norms which comprise society, express themselves differently in different circumstances. For example, he notes legal rules as an expression for such social facts/norms and describes how society, through its institutions, resists any attempt to break them down. However, he also addresses that rules of ethics are expressions of social facts/norms, which function coercively, if in a different manner: “If I do not present my attire in conventional conformity, do not care for the customs of my country or class, the ridicule and distancing I am subject to represents coercion for all practical purposes, even if it is milder (1991, p. 22).

Durkheim argues emphatically that it is exactly these social facts/norms that comprise Sociology's particular objects of study. Furthermore, in *The Division of Labor in Society* (1997), Durkheim differentiates between law and other social phenomena because law highlights how the social facts/norms of a society are expressed in a unique manner. Early criticism of Durkheim's social studies pointed out that they for all practicality demanded legal knowledge (see Cotterell 1999, p. 31); namely, due to Durkheim's belief that sociology's richest source of knowledge lay in its studies of law. By studying legal rules from a certain perspective, one can observe the fundamental structures comprised of social facts, which in turn constitute the solidarity of society – in other words, affinity.

From a science of norms perspective, it would seem natural to seek knowledge about those norms, who organizes society at a comprehensive level, through studies of law and legislation processes. However, it is quite possible to exert influence on the norm systems of society through other channels than legislation – one of the clearest examples of this would be public discourse. The difference between the motivation of individuals and the norm structures of society correspond within science to the differences between psychology and sociology. Since sociology's infancy, sociology has been dubbed merely an extension of psychology studies.

Society is nothing but its members – a mass of individuals and their internally motivated actions. Durkheim rejected such reasoning and claimed that by the same token, it would be just as logical to reduce the discipline of biology to simply an extension of chemistry and physics.

Thus, Durkheim believed that through interaction, the individuals of society create a life form whose characteristics are a different entity to the life form and consciousness that each separate individual represents. This societal existence constitutes the sociological object for study. From this perspective, the actions and motivational systems of individuals only become relevant if they contribute knowledge of society when it expresses itself on a comprehensive level. This does not mean that knowledge of the individual-level from, for example, a psychological point of view, would be of lesser scientific interest – neither did Durkheim imply that. It would simply indicate that it is a form of knowledge that in itself is not sociologically relevant. Our belief, however, is that a razor sharp Durkheimian differentiation between sociology and psychology is of lesser weight today. Furthermore, it is doubtful that Durkheim's assertive belief that law adheres to norms is reasonable.

However, the Durkheimian perspective on social theory and sociology's role, as interpreter of the comprehensive structures of social systems, does give norms a clearer role. They become indisputable, social entities, which must only be understood from a societal aspect. They arise and reproduce according to predetermined patterns and provide a basis for decision making, upon which individuals – after weighing in their individual, subjective perspectives – may act. Relinquishing much control over their own actions to environmental norm structures leads to a less complicated life. In this respect, one can compare the individual's situation to floating on a river. One can fairly non-contemplatively allow oneself to be transported in accordance with the currents of the river. But should one aspire to deciding the direction of the route oneself, one chooses a much rougher passage of way. Norms, from a Durkheimian perspective, function in the same manner – how difficult they are to resist varies from one situation to another. Individuals must weigh the benefits of swimming against the current against the effort demanded to depart from the plotted course.

Law in books and norms in action

The science of norms project allows in some respects for a broader perspective of the objectives of sociology. Traditionally, Sociology of Law studies the relationship between legal ideals and legal praxis (See for instance Pound's famous *Law in books and Law in action* from 1910 and Ehrlich 1913). Questions that arise within the

framework of such a perspective may, for example, be concerned with whether the application by authorities reflects the legislative intentions. Empirical knowledge is collected from two given fields: (a) law; legislation, preparatory work and possibly contemporary political situations and (b) authorities; documentation of the implementing authority's praxis, often combined with interviews and participatory observers. The analysis is based on comparatives between the two fields and a, for the subject, illuminating theoretical construction (preferably classical).

Sociology of Law, when viewing its development within the framework of the science of norms, employs to some extent a new approach towards research assignments. The two main fields are not comprised of law and authorities, but of (a) social constructions (society), and (b) materialistic matters (praxis). The relevance of sociology of law reveals itself when viewed from a perspective that the ties between socially constructed society and praxis are comprised of norms. The link between what is thought and what is practiced is the instruction of action and the socially reproduced instruction of action is the norm.

George Simmel (1858-1918), who is usually included amongst the great social science classicists alongside Durkheim, Marx and Weber, poses a question in his renowned essay: "Wie ist das Gesellschaft möglich?" – how is society possible? Without delving further into the matter, we can establish that his answer is founded on the basic premise that there must be harmony – no matter how it has arisen – between the development of society and processes of life on the one hand and people's individual characteristics and impulses on the other. In other words, every human is a part of social contexts and influences other individuals; whilst simultaneously being an individual that is influenced and shaped by her social environment. The interaction between individuals allows for mutual decision-making; at first glance, a simple thesis that could be stated to define the very essence of large bodies of social theory.²¹ What separates the different orientations from each other is, amongst other things (or indeed, perhaps predominantly), the viewpoint of how mutual decision-making comes about. From a sociology of law perspective – in the manner it has been formulated in this study – it is through the norms of society (both legal and social) that mutual decision-making arises. The fact that different systems of norms deliver separate solutions to given questions is of special interest from a sociology of law perspective – and particularly when it concerns discrepancies between legal perspectives and directives for action that arise from within the framework of social norms.

²¹ See e.g. viewpoints noted in the foreword of the broad anthology, Classical and Modern Social Theory, where the following is expressed: "Social Theory's task is to define concepts to clarify human actions within their social contexts and also relations and changes in social life"

Scientific method: studying social norms

Sociologically orientated sociology of law has not been accepted within the legal sciences, while legal science-orientated sociology of law has not been accepted within sociology - a dilemma which has been described as the double exclusion of sociology of law (Nelken 1993; Cotterell 1998; Banakar 1998; Hydén 1999). Problems have arisen in particular in the collision between empirical sociology and dogmatic jurisprudence. Both disciplines represent such widely disparate perspectives of reality that they in fact do not accept each other's conclusions as relevant. However, an argument is put forward, within the framework of the study, that this norm-concept does have the potential to bridge the gap between sociology and legal science. The idea is that norms ontologically represent attributes, which in turn correspond to the demands of being managed methodologically, both by empirical sociology as well as legal science. Empirical sociology may study norms (e.g. rules of law), in their capacity to constitute various social reproductions. Legal science may study norms/rules of law in the sense that they constitute imperatives, which may relate logically to other imperatives. If one wishes to understand how norms and rules of law influence behaviours, then one must study the norms based on the fact that they constitute the individuals perception regarding their environment's expectations of their own behaviour. If the norms are perceived from a standpoint of these three essential attributes, it becomes clear that different aspects of norms can be illuminated from within the respective epistemological system

In this study, we research to what extent society's social norms support the legal norms which regulate the use of and the behaviour on the internet. One may envision different ways of researching social norms. It could, for example, be carried out through research of printed sources, through observation of behaviours or by conducting interviews. Durkheim held the view that legality in itself constitutes the primary source of knowledge on how social solidarity expresses itself and that through research of the law, one may reach an insight into the moral values of a society. At first glance, this would seem to be a reasonable conclusion –

at least, when viewing democratic societies in which laws arise through common, or collective processes. However, this notion, possibly Durkheim's foremost thesis on the relationship between law and society is paradoxically the least useful from a sociology of law perspective. If one presumes that laws reflect the underlying social structures, then the incitements for comparative studies are reduced. As far as sociology of law is concerned, and perhaps especially the sociology of law that relates to the norm model within social sciences, it is exactly the disparities (differences), between law and the social norms that are of particular interest (Lukes & Scull 1983, Cotterell 1991, see Banakar 1994).

In the following pages we will present a model from which it is possible to study social norms without having to turn to legal or other printed sources. This model is inspired by the theory developed by Ajzen & Fishbein (Ajzen & Fishbein 1980; Ajzen 2005), which they entitle Theory of Planned Behaviour (TPB). The data was compiled through a respondent study via surveys and the collected research is processed by way of a mathematical model, developed within the framework of Måns Svensson's dissertation *Social Norms and the Observance of Law* (2008).

Respondent selection

The survey which is the basis for the respondent study was e-mailed to 1,400 recipients during January-February and by the time the survey was ended, the respondents numbered 1,047, which gives a response frequency of 74.8 percent, and a total of over 1,000 respondents, thus achieving the predetermined goal. The respondents constitute a nationally representative sample with regards to gender and regional belongings (metropolitan, rural), within the age group 15-25 years. The reason the respondent group was limited to the age group was because we are mainly interested in participants who have grown up with the internet and it's uses as a natural component of their daily reality. In this way, the social norms we study will have been influenced to a lesser degree by social structures which may have arisen independently of the internet. The national sample spread with regards to residence is good. The sample group, excepting the defined sample criteria noted above, was selected from CINT CPX (Cint Panel eXchange), which is made up of 250,000 individuals within Sweden, who represent a national average of the population. The fact that the respondents belong to CINT CPX means that they have accepted beforehand to participate in survey studies via the internet and that they receive some small compensation for taking part in a survey.

Question 1: The social environment's viewpoint of copyright and file sharing.

There are various viewpoints concerning the question of file sharing. Some people may believe that it is up to each individual to decide whether to download, for example, movies and music, while others believe that it is illegal and that therefore one should never download or upload copyright-protected material on the internet.

This question concerns how you think your social environment views you.

To what extent do the following persons believe you should not download copyright-protected movies and music from the internet?

Check on a scale 1-7 (and not relevant)

Check the alternative "Not relevant in my case", if any of the persons listed below do not exist.

1 = They do not mind

7 = It is very important to them

X= Not relevant in my case

	1	2	3	4	5	6	7	X
Your mother								
Your father								
Other close relatives								
Your partner (girlfriend, boyfriend etc.)								
Your friends								
People you associate with online								
Your teacher/boss								
Your neighbours								
Casual acquaintances								

Question 2: Your view of your social environment.

You probably evaluate people's opinions differently. This question concerns how you view your social environment.

To what extent do you believe the following person's opinions of file sharing are important, when you choose whether or not to share files.

Check on a scale 1-7 (and not relevant)

Check the alternative "Not relevant in my case", if any of the persons listed below do not exist.

1 = They do not mind

7 = It is very important for them

X= Not relevant in my case

	1	2	3	4	5	6	7	X
Your mother								
Your father								
Other close relatives								
Your partner (girlfriend, boyfriend etc.)								
Your friends								
People you associate with online								
Your teacher/boss								
Your neighbours								
Casual acquaintances								

Processing of the respondent survey data

The calculations from which the results of the respondent survey are gathered, are accounted for in the following passage. The calculations are based on the survey questions that ask the respondents to evaluate different relationships surrounding specific persons in their environment. A step by step explanation to facilitate understanding of how the calculation model is designed follows. The model is based on two questions/ complex queries, which were directed to the respondents that took part in the study. Please note that only rounded off responses are accounted for, but that the whole values have been used for the calculations in the example. This entails that all responses are approximate in regards to their premises. The formula, from which basis the separate steps are constructed, follows towards the end of this passage.

In the array presented below, the following letters indicate representatives for your social environment respectively:

- (a) = Respondent's mother
- (b) = Respondent's father
- (c) = Respondent's other close relatives
- (d) = Respondent's partner
- (e) = Respondent's friends
- (f) = Respondent's internet acquaintances
- (g) = Respondent's teacher/boss
- (h) = Respondent's neighbours
- (i) = Respondent's casual acquaintances

Step one

The results of the first question “*To what extent do the following persons believe you should not download copyright-protected movies and music from the internet?*” are compiled in a chart in which the number of answers to each coefficient (which are comprised of the values indicated on the scale 1-7) are accounted for respectively for each representative of the social environment. In the example shown below (chart 1), 447 respondents answered that their mother does not care whether the respondent file shares. 10 respondents answered that they believe it is very important to their casual acquaintances that they do not file share copyright-protected material.

Table 1. Respondent's perception of the viewpoint held by social environment representatives of any contingent file sharing.

Coeff.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	447	466	484	530	731	659	344	550	626
2	146	140	145	71	126	75	134	90	95
3	121	114	125	39	51	36	120	70	62
4	98	97	92	33	39	33	134	62	68
5	76	61	38	12	17	8	55	16	12
6	32	22	11	7	5	4	39	9	7
7	36	29	15	12	14	11	33	10	10

Step two

The coefficients have then been multiplied by the number of answers indicated for each coefficient and each social environment representative (chart 2). Continuing from the example given in step 1, one can see that 447 respondents have indicated a value of 1 for the environment representative “mother”, which is quantified as $447 \times 1 = 447$ and that 10 respondents have indicated a value of 7 for “casual acquaintances” which is quantified as $10 \times 7 = 70$. The various products (coefficients x number of answers) have then been summarized for each social environment representative respectively. The aggregate sum for “mother” reads as follows:

$$447+292+363+392+380+192+252=2318.$$

The summary for each social environment representative indicates the aggregate value respectively, regarding to which extent respondents believe the respective representative views it as being important that the respondent adheres to the law and does not file share.

Table 2. The product of the coefficients and the number of social environment representatives.

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
x 1	447	466	484	530	731	659	344	550	626
x 2	292	280	290	142	252	150	268	180	190
x 3	363	342	375	117	153	108	360	210	186
x 4	392	388	368	132	156	132	536	248	272
x 5	380	305	190	60	85	40	275	80	60
x 6	192	132	66	42	30	24	234	54	42
x 7	252	203	105	84	98	77	231	70	70
	2318	2116	1878	1107	1505	1190	2248	1392	1446

Step three

The number of answers concerning the social environment representative's views has then been quantified (from chart 1) and for "mother" the summary reads as follows:

$$447+146+121+98+76+32+36=956.$$

The total number of respondents in the survey was 1,047. Of these, 91 respondents answered that the question concerning their mother was not relevant (for example if their mother is not alive), which leaves 956 responses for the social environment representative "mother". The number concerning the social environment representative's views has been summarized respectively in the same manner (chart 3).

Table 3. Summary of answers (regarding respondent's perception of environment representative's viewpoint) for each environment representative respectively.

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
956	929	910	704	983	826	859	807	880

Step four

To quantify a mean value for social environment representatives – indicated on a scale of 1-7, the summarized values (last row of chart 2), were divided by the number of answers for social environment representatives respectively. For mother, this means: $2318 / 956 = 2.42$ and for casual acquaintances: $1446 / 880 = 1.64$. The values for each social environment representative are accounted for respectively (chart 4). The value indicates external norm strength on a scale of 1-7, and for each social environment representative. The mean external norm strength is quantified by summarizing the norm strength of all social environment representatives and divided by the number of social environment representatives.

Table 4. External norm strength regarding file sharing of copyright protected material reported for each social environment representative respectively, with a mean value indicating the aggregate external norm strength.

Social environment representatives	External norm strength
(a) Mother	2.42
(b) Father	2.28
(c) Other close relatives	2.06
(d) Partner	1.57
(e) Friends	1.53
(f) Internet acquaintances	1.44
(g) Teachers/bosses	2.62
(h) Neighbours	1.72
(i) Casual acquaintances	1.64
Mean external norm strength	1.92

Step five

The data compiled from question 2 *To what extent do you believe the following person's opinions of file sharing are important, when you choose whether or not to share files*, has then been summarized in the same manner as the data compilation from question 1 (chart 1). The results were then compiled in a chart in which the number of answers for each respective coefficient (comprised of the value indicated on the scale 1-7), were accounted for each social environment representative. In the example below (chart 5), 368 respondents indicated that they do not care about their mothers viewpoint on whether they share files or not and 73 respondents indicate that mother's viewpoint on this matter is very important. 696 respondents indicate that they do not care about their casual acquaintance's viewpoint of whether they share files and 13 respondents indicate that the viewpoint of casual acquaintances on this matter is very important.

Table 5. Respondent's evaluation of social environment representative's perception.

Coeff.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	368	351	479	273	363	536	505	682	696
2	94	96	129	39	73	99	112	79	79
3	113	120	108	69	136	72	93	39	48
4	135	130	110	113	156	76	96	54	59
5	110	101	53	83	124	28	43	14	13
6	52	58	15	75	61	15	19	3	4
7	73	65	29	73	44	13	23	9	13

Step six

The coefficients have then been multiplied by the number of answers indicated for each coefficient and each social environment representative (chart 5). One sees that 368 respondents have indicated the value 1 for the social environment representative “mother”, which quantifies as $368 \times 1 = 368$ and that 13 respondents have indicated the value 7 for “casual acquaintances”, which quantifies as $13 \times 7 = 91$. The separate products (coefficient x number of answers), have then been summarized respectively for each social environment representative. For “mother” the summary reads as follows:

$$368+188+339+540+550+312+511=2808.$$

The sum for each respective social environment representative indicates the aggregate value regarding to which extent the respondents feel that the viewpoint of each respective social environment representative on whether they should not share files is of importance to them (chart 6).

Table 6. The product of coefficients and number of social environment representatives.

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
x 1	368	351	479	273	363	536	505	682	696
x 2	188	192	258	78	146	198	224	158	158
x 3	339	360	324	207	408	216	279	117	144
x 4	540	520	440	452	624	304	384	216	236
x 5	550	505	265	415	620	140	215	70	65
x 6	312	348	90	450	366	90	114	18	24
x 7	511	455	203	511	308	91	161	63	91
•	2808	2731	2059	2386	2835	1575	1882	1324	1414

Step seven

The number of respondents for the respective social environment representatives has then been summarized (chart 5), and for “mother” the summary reads as follows:

$$368+94+113+135+110+52+73=945.$$

The same calculation in relation to the number of respondents in the survey as with chart 3 is applied. The result is accounted for, for each social environment representative (chart 7).

Table 7. The aggregate number of answers (regarding the respondents evaluation of perceptions), for each respective social environment representative.

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
945	921	923	725	957	839	891	880	912

Step eight

To achieve a mean value for each respective social environment representative – indicated on a scale from 1-7, the summarized values (last row, chart 6), have been divided by the number of answers for each respective social environment representative (chart 7). For “mother” it reads as follows: $2808 / 945 = 2.97$ and for casual acquaintances: $1414 / 912 = 1.55$. The values are accounted for, for each respective social environment representative (chart 8). The value indicates susceptibility to norm influence on a scale of 1-7 and for each respective social environment representative.

Table 8. The respondent's susceptibility to influence from each respective social environment representative.

Social environment representative	Susceptibility
(a) Mother	2.97
(b) Father	2.97
(c) Other close relatives	2.23
(d) Partner	3.29
(e) Friends	2.96
(f) Internet acquaintances	1.88
(g) Teachers/bosses	2.11
(h) Neighbours	1.50
(i) Casual acquaintances	1.55
Mean susceptibility	2.39

Step nine

To quantify the respondents susceptibility to influence from the respective social environment representative as a quota of “possible susceptibility”, the values of each social environment representative (chart 8) are divided by 7, which is the maximum susceptibility possible. For “mother” this reads as $2.97 / 7 = 0.42$ and for “casual acquaintances”, $1.55 / 7 = 0.22$. The values are accounted for, for each respective social environment representative (chart 9).

Table 9. Susceptibility expressed as a portion of maximum susceptibility (7).

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
0.42	0.42	0.32	0.47	0.42	0.27	0.30	0.21	0.22

Step ten

At this point it is time to weigh the external norm strength against the degree of susceptibility. The first step in this process is to multiply the external norm strength (chart 4) of each respective social environment representative by the respondent's susceptibility expressed as a quota of maximum susceptibility (chart 9). For "mother" this reads as $2.42 \times 0.42 = 1.03$ and for "casual acquaintances", $1.64 \times 0.22 = 0.36$. The results are accounted for, for each respective social environment representative (chart 10). The value indicates the degree of influence that each respective social environment representative exerts on the respondent's decision-making, regarding the respondent's choice whether or not to break the rules and file share.

Table 10. The respondent's susceptibility to influence from each respective social environment representative, multiplied by the external norm strength of each respective social environment representative.

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1.03	0.96	0.66	0.74	0.65	0.39	0.79	0.37	0.36

Step eleven

The respective social environment representative's degree of influence is then weighed together for a cumulative influence of norms. This cannot be done by calculating the mean strength of respective social environment representatives (chart 10). If this was done, a low value for "casual acquaintances" would weigh as heavily in decision-making as a high value for "mother". That this would be unreasonable is obvious if one considers the respondent may indicate that they do not care at all about the viewpoint of "casual acquaintances" (susceptibility 1, chart 8). In that case, a low value of degree of influence could strongly influence the mean, despite respondents indicating that they do not care about the viewpoint of "casual acquaintances". Therefore, it is necessary to weigh each social environment representative's quota of the cumulative influences of norms, from the position of each respective social environment representative's specific degree of influence. This is done by multiplying the degree of susceptibility for each respective social environment representative (chart 8), by the degree of influence that the respective social environment representative exerts on the respondents decision-making (chart 10). For "mother", this reads as $2.97 \times 1.03 = 3.06$ and for "casual acquaintances",

$1.55 \times 0.36 = 0.56$. The values are accounted for, for each respective social environment representative and summarized (chart 11).

Table 11. The respondents susceptibility multiplied by the respondents susceptibility (percentage) to influence from each respective social environment representative, multiplied by the norm strength for each respective social environment representative. The products are summarized thereafter.

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
3.06	2.86	1.47	2.43	1.92	0.73	1.67	0.56	0.56
Summary: 15.25								

Step twelve

Susceptibility of social environment representatives is then summarized (chart 8) and accounted for (chart 12).

Table 12. Summary of respondent's susceptibility to influence from social environment representatives.

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
2.97	2.97	2.23	3.29	2.96	1.88	2.11	1.50	1.55
Summary: 21.47								

Step thirteen

The capacity of the norm to influence behaviour on a scale from 1-7 is then quantified by dividing the aggregate weighted social environment representative's quota (chart 11), by the sum of the respondent's susceptibility to influence from the respective social environment representatives (chart 12):

$$15.25/21.47 = \underline{0.71}$$

The value states the norm's capacity to influence the respondent's behaviour (on a scale of 1-7), regarding rule compliance in relation to laws on file sharing. Since the value is below 1, this shows that there is no occurrence of norm influence in regards to rule compliance in relation to laws on file sharing of copyright-protected material.

Calculation of social norms expressed in mathematical terms

(1)

$$\begin{array}{c} \text{i} \\ \hline 1 \ X_{1,1} \ \dots \ X_{1,10} \\ \cdot \\ \cdot \\ \cdot \\ 7 \ X_{7,1} \ \dots \ X_{7,10} \end{array} \qquad \begin{array}{c} \text{i} \\ \hline 1 \ Y_{1,1} \ \dots \ Y_{1,10} \\ \cdot \\ \cdot \\ \cdot \\ 7 \ Y_{7,1} \ \dots \ Y_{7,10} \end{array}$$

(2)

$$(a) \ a_1 = \sum_{i=1}^7 iX_{i,1} / \sum_{i=1}^7 X_{i,1}$$

.

$$(j) \ a_{10} = \sum_{i=1}^7 iX_{i,10} / \sum_{i=1}^7 X_{i,10}$$

(3)

$$(a) \ b_1 = \sum_{i=1}^7 iY_{i,1} / \sum_{i=1}^7 Y_{i,1}$$

.

$$(j) \ b_{10} = \sum_{i=1}^7 iY_{i,10} / \sum_{i=1}^7 Y_{i,10}$$

(4)

$$P_1 \dots P_{10} = \frac{a_1 b_1}{7} \ \dots \ \frac{a_{10} b_{10}}{7}$$

(5)

$$Z = \frac{b_1 p_1 + \dots + b_{10} p_{10}}{b_1 + \dots + b_{10}}$$

X states the values that respondents indicate on how the social environment views them

Y states the values that respondents indicate on how they view the social environment

a_1-a_{10} states the external norm strength for each social environment representative respectively

b_1-b_{10} states susceptibility to norm influence from each social environment representative respectively

Z states the norms capacity to influence behaviour

The study of norms – presenting data

Here the study is divided into subcategories where the first regards background data of the respondents, the second the norms capacity to influence towards observance of law and the third regards how the respondents reason in relation to law, anonymity and willingness to pay for media content.

Background respondent data

Of the 1047 respondents to the questionnaire about 59 percent (619) were female and 41 percent (427) were male. One did not answer. The respondents were between 15 and 25 years old with about three out of four in the span between 19 and 23, see table 13.

Table 13. Age of the respondents.

Age	15	16	17	18	19	20	21	22	23	24	25	Total
Amount	20	23	36	64	118	146	183	190	160	87	19	1046

Table 14. Where the respondents live.

Question: <i>Where do you live?</i>	Answers	Percentage
City	767	73 %
Small town	182	17 %
Sparsely populated area	95	9 %
No response	3	n/a
Total (answers)	1044	100

The majority of the respondents, about 73 percent, live in a city, see table 14. Out of 1043 answers more than 99 percent said that they had access to a computer at home with internet access. Regarding how much time the respondents spend each day at the internet connected computer at home, more than 75 percent spent at least two hours a day and more than 20 percent more than 6 hours a day, see table 15.

Table 15. How many hours the respondents spend online at home by the computer.

Question: <i>How many hours a day do you spend in your home connected to the internet via a computer?</i>	Answers	Percentage
No time at all	10	1 %
Less than 1 hour	53	5 %
1-2 hours	188	18 %
2-4 hours	310	30 %
4-6 hours	240	23 %
More than 6 hours	239	23 %
No response	3	n/a
Total (answers)	1040	100

Table 16. How often the respondents download possibly copyrighted material.

<i>Question: How often do you normally download music, movies or other files that possibly are protected by copyright?</i>	Answers	Percentage
Never	218	22 %
Once a month at a maximum	242	24 %
Once a week at a maximum	222	22 %
More than once a week	218	22 %
Daily	107	11 %
No response	40	n/a
Total (answers)	1007	100

Norms capacity to influence towards observance of law

The result of the section of the study that researches whether these copyright regulations are supported by the social norms developed by young people (15-25), is presented in the following, based on a number of respondent categories. Initially, the result is presented to all participating respondents. Then, the result is presented to a number of different categories of respondents: men, women, city residents, residents of smaller towns, rural residents, those that file share on a daily basis and those that never file share.

The result is strikingly similar no matter which category of respondents is focused upon. The social norms are so weak in all respondent-categories, that no influence of social norms towards regulatory compliance concerning file sharing can be demonstrated.

Of particular interest is the circumstance that of the respondents who state that they never file share, they do not experience any social pressure to abstain. The influence of social norms on behaviour for this group measure 1,04 on a scale 1-7, which should be deemed a negligible influence. In other words, these respondents abstain from file sharing for other reasons. For example, they may not have the technical knowledge needed, or they may have their own personal convictions independent of manifest social pressure.

A small, but none the less distinct difference, can be observed between men and women in their responses to how they perceive the social pressure. Women perceive somewhat more pronounced pressure to abstain and they are also slightly more inclined to evaluate the perceived pressure as relevant to their actions. However, the levels are still so low that the social norms amongst women cannot be stated as strong enough to influence behaviour towards regulatory compliance.

Social norms in relation to regulations regarding file sharing on the internet
 Selection: all

Table 17. Respondent's perception regarding environment representatives, presented as norm strength and susceptibility plus the combined effect as norm capacity to influence behaviour.

Environment representatives	Norm strength	Susceptibility
(a) Mother	2,42	2,97
(b) Father	2,28	2,96
(c) Other close relatives	2,06	2,23
(d) Partner	1,57	3,29
(e) Friends	1,53	2,96
(f) Internet acquaintances	1,44	1,88
(g) Teachers/bosses	2,62	2,11
(h) Neighbours	1,72	1,50
(i) Casual acquaintances	1,64	1,55
Means	1,92	2,39

Table 18. Respondent's perception of the environment representatives viewpoint on whether the respondent should refrain from file sharing.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	447	466	484	530	731	659	344	550	626
2	146	140	145	71	126	75	134	90	95
3	121	114	125	39	51	36	120	70	62
4	98	97	92	33	39	33	134	62	68
5	76	61	38	12	17	8	55	16	12
6	32	22	11	7	5	4	39	9	7
7	36	29	15	12	14	11	33	10	10

Table 19. Respondent's evaluation of the environment representative's viewpoint.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	368	351	479	273	363	536	505	682	696
2	94	96	129	39	73	99	112	79	79
3	113	120	108	69	136	72	93	39	48
4	135	130	110	113	156	76	96	54	59
5	110	101	53	83	124	28	43	14	13
6	52	58	15	75	61	15	19	3	4
7	73	65	29	73	44	13	23	9	13

Norm's capacity to influence the respondent's behaviour (on a scale from 1-7) towards observance of law: < 1

Social norms in relation to regulations regarding file sharing on the internet
Selection: male

Table 20. Respondent's perception regarding environment representatives, presented as norm strength and susceptibility plus the combined effect as norm capacity to influence behaviour.

Environment representatives	Norm strength	Susceptibility
(a) Mother	2,37	2,83
(b) Father	2,21	2,90
(c) Other close relatives	2,03	2,18
(d) Partner	1,62	3,00
(e) Friends	1,43	2,76
(f) Internet acquaintances	1,48	1,94
(g) Teachers/bosses	2,31	2,00
(h) Neighbours	1,63	1,53
(i) Casual acquaintances	1,66	1,60
Means	1,86	2,30

Table 21. Respondent's perception of the environment representatives viewpoint on whether the respondent should refrain from file sharing.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	174	192	193	195	317	291	164	238	255
2	70	62	63	34	0	26	62	32	39
3	52	46	58	21	14	17	50	34	26
4	38	38	35	17	16	16	43	23	28
5	30	26	13	7	9	5	23	4	7
6	10	7	4	1	3	3	9	2	2
7	12	9	4	2	5	5	7	3	4

Table 22. Respondent's evaluation of the environment representatives viewpoint.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	159	153	205	124	164	223	216	271	278
2	40	41	44	17	32	38	44	30	29
3	44	42	40	28	49	36	37	16	25
4	50	48	43	41	60	34	33	18	22
5	43	40	19	25	48	14	17	9	6
6	16	24	6	31	20	4	4	2	2
7	27	27	13	20	13	8	9	4	7

Norm's capacity to influence the respondent's behaviour (on a scale from 1-7) towards observance of law: < 1

Social norms in relation to regulations regarding file sharing on the internet
Selection: female

Table 23. Respondent's perception regarding environment representatives, presented as norm strength and susceptibility plus the combined effect as norm capacity to influence behaviour.

Environment representatives	Norm strength	Susceptibility
(a) Mother	2,45	3,07
(b) Father	2,32	3,01
(c) Other close relatives	2,09	2,64
(d) Partner	1,54	3,48
(e) Friends	1,56	3,10
(f) Internet acquaintances	1,41	1,83
(g) Teachers/bosses	2,83	2,20
(h) Neighbours	1,79	1,49
(i) Casual acquaintances	1,63	1,52
Means	1,96	2,44

Table 24. Respondent's perception of the environment representatives viewpoint on whether the respondent should refrain from file sharing.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	273	274	291	335	414	368	180	312	371
2	76	78	82	37	86	49	72	58	56
3	69	68	67	18	37	19	70	36	36
4	60	59	57	16	23	17	91	39	40
5	46	35	25	5	8	3	32	12	5
6	22	15	7	6	2	1	30	7	5
7	24	20	11	10	9	6	26	7	6

Table 25. Respondent's evaluation of the environment representatives viewpoint.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	209	198	274	149	199	313	289	411	418
2	54	55	85	22	41	61	68	49	50
3	69	78	68	41	87	36	56	23	23
4	85	82	67	72	96	42	63	36	37
5	67	61	34	58	76	14	26	5	7
6	36	34	9	44	41	11	15	1	2
7	46	38	16	53	31	5	14	5	6

Norm's capacity to influence the respondent's behaviour (on a scale from 1-7) towards observance of law: < 1

Social norms in relation to regulations regarding file sharing on the internet
Selection: living in city

Table 26. Respondent's perception regarding environment representatives, presented as norm strength and susceptibility plus the combined effect as norm capacity to influence behaviour.

Environment representatives	Norm strength	Susceptibility
(a) Mother	2,41	2,92
(b) Father	2,27	2,95
(c) Other close relatives	2,06	2,18
(d) Partner	1,57	3,30
(e) Friends	1,52	2,95
(f) Internet acquaintances	1,42	1,84
(g) Teachers/bosses	2,61	2,09
(h) Neighbours	1,74	1,46
(i) Casual acquaintances	1,64	1,53
Means	1,92	2,36

Table 27. Respondent's perception of the environment representatives viewpoint on whether the respondent should refrain from file sharing.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	325	342	356	404	542	488	247	403	466
2	116	108	114	56	92	55	105	69	72
3	97	88	97	30	41	24	89	55	45
4	69	70	66	27	30	23	106	45	51
5	58	49	29	7	11	6	38	10	8
6	25	18	9	7	3	2	26	7	5
7	21	16	9	8	9	8	23	9	8

Table 28. Respondent's evaluation of the environment representatives viewpoint.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	271	258	361	206	267	392	377	512	516
2	76	74	97	28	54	75	85	61	64
3	88	90	81	50	101	55	71	31	38
4	103	100	79	88	119	54	72	33	40
5	81	76	36	62	97	16	32	9	8
6	35	42	11	61	42	10	13	2	4
7	48	44	18	53	28	9	15	5	8

Norm's capacity to influence the respondent's behaviour (on a scale from 1-7) towards observance of law: < 1

*Social norms in relation to regulations regarding file sharing on the internet
Selection: living in small community*

Table 29. Respondent's perception regarding environment representatives, presented as norm strength and susceptibility plus the combined effect as norm capacity to influence behaviour.

Environment representatives	Norm strength	Susceptibility
(a) Mother	2,48	3,13
(b) Father	2,32	2,93
(c) Other close relatives	2,00	2,34
(d) Partner	1,53	3,18
(e) Friends	1,54	2,92
(f) Internet acquaintances	1,43	1,81
(g) Teachers/bosses	2,58	2,02
(h) Neighbours	1,64	1,49
(i) Casual acquaintances	1,60	1,47
Means	1,90	2,36

Table 30. Respondent's perception of the environment representatives viewpoint on whether the respondent should refrain from file sharing.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	78	78	83	87	123	114	66	100	105
2	20	24	20	10	21	12	17	10	12
3	14	17	18	3	8	8	20	11	12
4	18	17	18	4	6	8	17	12	11
5	14	6	3	3	3	1	11	4	3
6	3	2	0	0	2	0	7	1	1
7	10	10	4	3	2	1	7	0	0

Table 31. Respondent's evaluation of the environment representatives viewpoint.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	64	61	76	43	63	99	88	114	118
2	9	13	20	10	14	15	18	10	10
3	19	25	20	16	23	12	16	7	7
4	19	20	16	14	24	11	11	10	10
5	15	13	9	13	14	5	5	1	1
6	8	6	2	7	9	3	2	0	0
7	21	15	8	14	12	2	6	2	2

Norm's capacity to influence the respondent's behaviour (on a scale from 1-7) towards observance of law: < 1

*Social norms in relation to regulations regarding file sharing on the internet
Selection: living in the countryside*

Table 32. Respondent's perception regarding environment representatives, presented as norm strength and susceptibility plus the combined effect as norm capacity to influence behaviour.

Environment representatives	Norm strength	Susceptibility
(a) Mother	2,47	3,10
(b) Father	2,29	3,18
(c) Other close relatives	2,20	2,47
(d) Partner	1,67	3,38
(e) Friends	1,62	3,16
(f) Internet acquaintances	1,63	2,26
(g) Teachers/bosses	2,74	2,45
(h) Neighbours	1,75	1,92
(i) Casual acquaintances	1,74	1,84
Means	2,01	2,64

Table 33. Respondent's perception of the environment representatives viewpoint on whether the respondent should refrain from file sharing.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	44	46	45	39	66	57	31	47	55
2	10	8	11	5	13	8	12	11	11
3	10	9	10	6	2	4	11	4	5
4	11	10	8	2	3	2	11	5	6
5	4	6	6	2	3	1	6	2	1
6	4	2	2	0	0	2	6	1	1
7	5	3	2	1	3	2	3	1	2

Table 34. Respondent's evaluation of the environment representatives viewpoint.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	33	32	42	24	33	45	40	56	62
2	9	9	12	1	5	9	9	8	5
3	6	5	7	3	12	5	6	1	3
4	13	10	15	11	13	11	13	11	9
5	14	12	8	8	13	7	6	4	4
6	9	10	2	7	10	2	4	1	0
7	4	6	3	6	4	2	2	2	3

Norm's capacity to influence the respondent's behaviour (on a scale from 1-7) towards observance of law: < 1

Social norms in relation to regulations regarding file sharing on the internet
Selection: file share on a daily basis

Table 35. Respondent's perception regarding environment representatives, presented as norm strength and susceptibility plus the combined effect as norm capacity to influence behaviour.

Environment representatives	Norm strength	Susceptibility
(a) Mother	1,95	2,15
(b) Father	1,72	2,23
(c) Other close relatives	1,75	1,56
(d) Partner	1,24	2,48
(e) Friends	1,23	2,36
(f) Internet acquaintances	1,22	1,67
(g) Teachers/bosses	2,22	1,56
(h) Neighbours	1,61	1,16
(i) Casual acquaintances	1,51	1,27
Means	1,60	1,83

Table 36. Respondent's perception of the environment representatives viewpoint on whether the respondent should refrain from file sharing.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	58	66	61	70	94	90	46	66	73
2	20	17	21	6	5	4	21	10	10
3	8	8	7	2	2	0	7	8	11
4	9	6	7	1	3	4	10	5	4
5	6	4	2	0	0	0	3	1	0
6	1	0	1	0	0	0	4	1	0
7	1	1	1	1	1	1	3	1	1

Table 37. Respondent's evaluation of the environment representatives viewpoint.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	56	56	76	48	55	74	72	87	87
2	16	14	9	5	11	6	9	4	6
3	8	8	4	6	10	5	6	1	3
4	11	11	9	7	13	9	7	3	3
5	9	9	2	3	6	3	3	0	0
6	1	2	1	7	2	1	0	0	0
7	2	3	0	6	6	1	0	0	1

Norm's capacity to influence the respondent's behaviour (on a scale from 1-7) towards observance of law: < 1

Social norms in relation to regulations regarding file sharing on the internet
Selection: never file share

Table 38. Respondent's perception regarding environment representatives, presented as norm strength and susceptibility plus the combined effect as norm capacity to influence behaviour.

Environment representatives	Norm strength	Susceptibility
(a) Mother	3,13	3,45
(b) Father	2,91	3,39
(c) Other close relatives	2,54	2,76
(d) Partner	2,19	3,78
(e) Friends	1,96	3,41
(f) Internet acquaintances	1,87	2,25
(g) Teachers/bosses	2,85	2,53
(h) Neighbours	1,93	1,80
(i) Casual acquaintances	1,80	1,81
Means	2,35	2,80

Table 39. Respondent's perception of the environment representatives viewpoint on whether the respondent should refrain from file sharing.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	71	78	81	80	117	99	69	107	121
2	18	21	18	16	27	14	17	10	11
3	26	18	31	13	17	16	26	15	14
4	20	21	18	12	19	11	22	16	19
5	24	17	16	5	7	4	10	4	4
6	12	10	4	6	1	1	12	4	2
7	20	19	9	6	6	5	13	4	3

Table 40. Respondent's evaluation of the environment representatives viewpoint.

Coef.	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1	62	61	74	45	61	88	83	121	127
2	17	16	25	4	12	18	23	13	14
3	21	22	24	11	27	13	18	13	10
4	28	26	32	25	35	24	23	19	18
5	21	21	14	23	25	5	9	2	4
6	15	14	4	12	15	4	6	0	1
7	28	25	14	25	21	7	12	6	6

Norm's capacity to influence the respondent's behaviour (on a scale from 1-7) towards observance of law: **1,04**

How do the respondents reason?

In the charts presented above, we show that there are no social norms at work that act towards regulatory compliance with regards to file sharing of copyright protected material on the internet. In the following section, we present the result of a number of related questions which may suggest how the existing norms manifest themselves. To a large extent, the respondents clearly share a perception of how one should relate to the question of file sharing – and that they also demonstrate a distinct, mutual standpoint concerning how society and law should relate to the fact that file sharing is a widely spread phenomenon amongst young people.

One section of the survey study that was carried out consisted of respondents who, in their own words, were asked to formulate their viewpoint on how the state and judiciary should relate to file sharing. The question read: *“How do you feel about the government enacting new laws that expand the possibility of identifying and convicting file sharers? How should the government relate itself to file sharing?”* A number of representative quotes from the responses are presented below:

”About the Ipred-law, it feels pretty badly thought through considering all the gaps and ways there are of getting around it. There are a number of ways for people to make sure that they can't get caught file sharing. The fact that just having the IP number doesn't hold water in court, or hasn't so far, just makes me even more confused about how they were thinking. Moreover, I think they're shooting in the wrong direction, instead there should be more services that make it legal and morally acceptable to download, for example iTunes' removal of copy protection and the development of Spotify help.”

”To me, criminalizing a large part of a country's population is absurd.”

”That the government gives corporations a mandate to play police is reprehensible, but understandable to a certain degree. Other solutions should be used instead of making file sharing illegal. File sharing can't be stopped, instead they should be adapting and finding new solutions instead of holding as hard as they can on to something that's already passé, because that's doomed to fail.”

”They can do what they want, but they will never be able to stop file sharing, if you just check how to do it, then there's no way for them to discover people. Instead, they should concentrate on developing other ways to get hold of music/movies/games. Downloading for a small fee would probably be enough, the way things are now people won't pay for example 200 kr for an album all that often, by downloading material from the internet you can reduce your costs dramatically and even students etc. that don't have much money could then legally get hold of music. An even better way, would be to increase taxes a little and let people file share, I think Germany does something like that and it seems to work. I think that solution is smarter since you surely won't find all the music you want at the paying-sites, not everyone listens to famous bands like Kent etc...”

"The old record industry is simply out dated. These are new times and we should adapt to them. Of course the artists should get paid for their work, but we don't need the record companies. Technology moves on all the time and old industries should be closed down, same thing goes for this one. Making frightening laws like IPRED and FRA and all the other ones is insane and the laws themselves are illegal. It's the job of the police and the judicial system to find and convict criminals, not the record companies."

"There are more important things for them to worry about. Instead of responding to the movie and music industry with sour faces they should inform them that they should take the opportunity to develop their marketing strategies. If the big companies (that produce movies/music), invested in, for example, alternatives to the cinema, they wouldn't lose as much money. A universal release date for the whole world where you can pay to see the movie as soon as it comes out by downloading or streaming. Many martial arts teach that it's simpler to use the enemy's force (momentum) against them instead of responding with the same force. So instead of working against file sharing, they should integrate themselves into it. The government can probably help the industry with this through tax reliefs or some other advantage if the industry decides to invest in the industry as a medium for selling entertainment. Due to my opinion that the industry should join the file sharing revolution, I also think that the government shouldn't legislate against file sharing. That just makes the industry hope they can fight back, but that's not a sustainable development. They will need to adapt. Besides, criminalizing such a large portion of Sweden's population is insane. This, of course, applies to other countries where file sharing is widespread and where the respective states are trying to hinder it. Be a part of this development, don't hinder it."

Table 41. If the respondents think that copyright enforcement laws will stop them or others from file sharing.

Question: <i>Do you think that new laws that expand the possibilities to identify and convict file sharers will stop you or others from file sharing?</i>	Answers	Percentage
Yes	286	28 %
No	718	72 %
No response	43	n/a
Total (answers)	1004	100

Table 42. Should the illegality alone stop people from file sharing of copyrighted content.

Question: <i>Do you think that since illegal file sharing is illegal one should never download or upload copyrighted content on the internet?</i>	Answers	Percentage
Yes	240	24 %
No	758	76 %
No response	49	n/a
Total (answers)	998	100

The following two questions can be seen in the light of the so called IPRED Directive on enforcement of copyright, which was implemented in Sweden only two months after this study was conducted. See section 3.2 above on the IPRED Directive. Less than 10 percent were using an online anonymity service but more than 60 percent claimed that they will use one in the future if new legislation enhances the possibilities for the respondent to be held legally liable when caught file sharing copyrighted material without permission, see table 43 and 44.

Table 43. The respondents' use of online anonymity services.

Question: <i>Are you using any anonymity service for online identity protection?</i>	Answers	Percentage
Yes	87	9 %
No	921	91 %
No response	39	n/a
Total (answers)	1008	100

Table 44. The inclination of future use of online anonymity services if legal regulations made it easier to find and process against file sharers.

<i>Question: Do you think that you will use an anonymity service for online identity protection if new legislation enhances the possibilities for you to be held legally liable when caught file sharing copyrighted material without permission?</i>	Answers	Percentage
Yes	613	61 %
No	391	39 %
No response	43	n/a
Total (answers)	1004	100

To the question in the survey regarding how much the respondents are willing to pay per month for free downloads of music, movies and other content, about 17 percent (171) answered “nothing”, 43 percent (437) answered “between 0 and 100 SEK (about 12,6 USD)” and 25 percent (249) said “between 100 and 200 SEK” (between 12,6 and 25,2 USD). The rest were mainly spread from 200 SEK (25,2 USD) and up to 500 SEK (63 USD). This means that the majority of respondents were willing to pay between 0 and about 25 USD a month to legally download as much music and movies as they liked. Note that about 40 percent (397) were willing to pay more than 12,6 USD a month, with a least about 15 percent (148) willing to pay more than 25 USD a month.

Conclusions and discussion

There are three main findings in this study. Firstly, the results indicate no social norms that hinder illegal file sharing. The surrounding imposes no moral or normative obstruction for the respondents file sharing of copyrighted content. Secondly, the legal trend does not correlate to this social norm in any way. On the contrary, there is a striking discrepancy between the social norms on illegal file sharing of copyrighted content and the legal regulation. The legal regulation is not only a national law, it is a stronghold in the global regulatory practice that is manifested through international treaties as well as EU law imposing not only a stronger copyright regulation but also taking part in a regulatory trend of stronger enforcement of copyright law, stronger copyright laws and enhanced control over internet behaviour, identities and communication. Thirdly, there are strong indications that neither the law in itself nor new legal attempts at enforcing copyright will change the social norm on illegal file sharing. To the opposite, there is a documented willingness of paying for anonymity, keeping the internet flow of content, rather than return to a system of payment for each product. The behaviour seems stronger and can therefore be assumed to be connected to something bigger and structurally more important than just retrieving the latest music or movies from Hollywood.

Our study of 15-25 year olds shows that 75 percent do not consider the fact that file sharing of copyright protected material is illegal, as a reason strong enough to abstain. Almost as many state that more stringent legislation will not stop them from downloading. This reveals a large discrepancy between the viewpoint of copyright legislation and of young people regarding what is right and wrong. File sharers do not believe copyright legislation should interfere with how they use the internet in their living rooms. If we choose to ignore this discrepancy, we run a clear risk of diminishing younger generations respect for rule of law. The discrepancy between legal and social norms bears witness to a growing conflict between the old and the new, between the analogical and the digital, or between

the mature industrial society's established powers structure and the emerging network-society's cheeky lack of respect.

As the establishment tries to maintain copyright laws with methods that worked during the analogical era, younger generation's respect for society's norms are hollowed out in a manner that in the long run will not benefit anyone. It is striking, that the respondents feel no social pressure to follow the law, whether from parents, friends, teachers, neighbours, etc. Quite simply, there are no social norms to back up the judicial norms in this field.

This demonstrates a large gap between the judicial perceptions that copyright is based upon and young people's viewpoint of what is right and wrong; even to the point where a considerable majority of the respondents claim that increased risks of being caught and/or tightened sanctions will lead to them to use one of the services that hide their IP-address when they interact on the internet. Such a service costs around 50kr (ca 4,7 EUR) a month and would mean hefty incomes for those persons who provide arenas for file sharing on the internet. This means that stricter enforcements against file sharers run the risk of creating purely counter-productive effects. These services were founded as a reaction to the emerging practice of anti-piracy organizations' hunt for illegal file sharers as well as the debate on data traffic surveillance.

Fundamentally, the problem is about the possibilities of creating a functioning market for digital products on the internet. Copyright in the digital age is not a viable enough legal construction, instead it needs additional action. The idea is that certain intellectually generated products, for example a recorded song or film, should provide the author with the opportunity to choose method of reproduction and marketing, and also to be compensated when someone uses the work in public. However, with the reservation that reproduction and copying may be allowed for the reproducer's private needs or use within her family or circle of friends. Legislators have not deemed it necessary to intrude into the private sphere in this case, and that the author's right of disposal should only encompass public events.

One reason for this is that it would be difficult to maintain copyright through surveillance and sanctions that reach all the way into people's living rooms. This is where today's problems present themselves. The formation of copyright has developed in a time when the reproduction of works did not present any major threat towards the author's monopolistic control of the work. There simply was not any readily available technology to do this, which however, there is today. Reproduction no longer poses any problems and the number of virtual "friends" who may partake of shared files is unlimited – even within the private sphere of the home. In other words, a situation has arisen in which the construction of copyright no longer delivers any obvious solutions to the fundamental conflict. The dividing line between what is private and what is public becomes increasingly diffuse.

Naturally, one could attempt to solve the problem by legislating that the material that is made available on the internet can no longer be attributed to the

private sphere. Such a strategy, however, would provide at least two problems. Firstly, the problem of maintaining copyright through surveillance and sanctions which reach deep into people's living rooms remains. Even more gravely, such a view does not live up to the perception of law held by many people. People tend to view the use of the computer in their living room as a private affair even when connected to the internet. People believe, for good reasons, that surveillance within the home is a violation of integrity.

On the whole, it is difficult to apply archaic principles of law in an era of technological change such as we are experiencing now. If we combine this with the respondents answers from the sociology of law study, that they are prepared to pay as much as 200 Swedish Kronor (About 18,8 EUR) a month to file share copyright protected material, then it becomes apparent that the problem is not so much about unwillingness to pay for the products they wish to consume. Rather, it concerns an unwillingness to accept a legal system that does not take advantage of the possibilities that this new technology offers as well as an unwillingness to accept what they consider a violation of integrity and an intrusion into the private sphere.

The challenge lies in constructing a functional market on the internet for these types of products, in which both the author as well as the consumer feel trust and security. However, this will not be accomplished if the legislator and judiciary system react counter-productively. We need to understand that this new technology has its own logic and the social processes of norm-development that follow in its wake. If one chooses to ignore the gap that has arisen between the general legal consciousness and the judicial norms, one risks more than just sabotaging the chance to create a functioning market - additionally, there is an evident risk of hollowing out younger generations respect for the rule of law.

But what would the results be if the study was conducted on a representative group of youngsters in the 27 Member states of the EU? Would it be the same striking lack of social norms saying that illegal file sharing is wrong or does Sweden represent a special case in that respect? Sweden is one of the most densely internet-connected countries in the world when it comes to broad band capacity and computer access. This is likely a factor in the game, a precondition, but not necessarily the initiative that gives the inevitable consequences of negligence of copyright legislation.

References

Legal references

The Berne Convention for the Protection for Literary and Artistic Works, last amended at Paris on September 28, 1979. Sweden signed on the 1 August 1904 and has adopted all the amendments of the Convention after that. Agreement on Trade-Related Aspects of Intellectual Property Rights signed in Marrakech, Morocco on 15 April 1994.

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society: INFOSOC.

DIRECTIVE 2006/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks.

Directive 2002/58/EC DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 29 APRIL 2004 ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS.

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

DIRECTIVE 2002/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 July 2002 concerning the processing of personal data

and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

Ds 2007:29 *Musik och film på Internet - hot eller möjlighet?*

The Electronic Communications Act (2003:389).

European Commission, Proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society, Brussels, 10 December 1997, COM(97) 628, Official Journal C108/6 of 7 April 1998

European Court of Justice, 15 May 2008 (Case C 341/07).

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention).

NJA II 1921

Opinion 3/2006 654/06/EN WP 119

Opinion 3/2006 on the Directive 2006/XX/EC of the European Parliament and of the Council on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC, as adopted by the Council on 21 February 2006, 654/06/EN WP 119.

Proposition 1960:17 Upphovsrätt till litterära och konstnärliga verk.
Auktorätskommitténs Skrivelse

Prop 2004/05:110 Upphovsrätten i informationssamhället – genomförande av direktiv 2001/29/EG, mm.

Prop 2004/05:135 Utökade möjligheter att förverka utbyte av och hjälpmedel vid brott m.m.

Prop. 2008/09:67 Civilrättsliga sanktioner på immaterialrättens område - genomförande av direktiv 2004/48/EG

SOU 1956:25 *Upphovsmannarätt till litterära och konstnärliga verk.* Lagförslag av Auktorätskommittén)

SOU 2003:35 Upphovsrätten i informationssamhället - genomförande av direktiv 2001/29/EG, m.m.

SOU 2007:76 Lagring av trafikuppgifter för brottsbekämpning

Utskottsbet. 1LU 1960:41 and 1960:43

Rsksr 1960:406

The Swedish Act on Copyright in Literary and Artistic Works – Act 1960:729, of December 30, 1960. Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk.

Literature

Ajzen, I. (2005). *Attitudes, personality and behaviour*. Maidenhead: Open University.

Ajzen, I. & Fishbein, M. (1980). *Understanding attitudes and predicting social behaviour*. Englewood Cliffs: Prentice-Hall.

Aubert, V. (1972). *Rättssociologi*. Stockholm: Bokförlaget Aldus/Bonniers.

Banakar, R. (1994). *Rättens dilemma : om konflikthantering i ett mångkulturellt samhälle*. Lund : Sociologiska institutionen: Lunds Universitet.

Banakar, R. (1998). "The identity crisis of a 'stepchild'. Reflections on the paradigmatic deficiencies of sociology of law" in *Retfaerd* 81. 1998 Nr 2.

Cotterrell, R. (1991). "The Durkhemian Tradition in the Sociology of Law" in *Law and Society Review* 923.

Cotterrell, R. (1998). "Why Must Legal Ideas Be Interpreted Sociologically?" in *Journal of Law and Society*. Volume 25. Number 2.

Cotterrell, R. (1999). *Emile Durkheim: Law in a Moral Domain*. Stanford, California: Stanford University Press.

Durkheim, E. (1991). "Sociologins metodregler" in Comte, Durkheim & Weber *Tre klassiska texter*. Göteborg: Bokförlaget Korpen.

Durkheim, E. (1997). *The division of labor in society*. New York: Free press.

Ehrlich, Eugen (1913/1936/2002) *Fundamental Principles of the Sociology of Law*, with an introduction by Roscoe Pound, with a new introduction by Klaus A. Ziegert, New Brunswick and London: Transaction Publishers.

Guneriussen, W. (1999). "Émile Durkheim" i Andersen, H. & Kaspersen, L. B. (red.). *Klassisk och modern samhällsteori*. Lund: Studentlitteratur.

Hoff, David & Svensson, Måns (1999) *Rättsregler, normer och socialt handlande*, Research Report, Sociology of Law 1999:3, Lund University.

Hugenholtz, Bernt (2000) *Why the Copyright Directive is Unimportant, and Possibly Invalid*, *European Intellectual Property Review* 501.

Hydén, H. (1978). *Rättens samhälleliga funktioner*. Lund: Studentlitteratur.

Hydén, H. (1999). "Even a stepchild eventually grows up: On the identity of Sociology of law" in *Retfaerd 85*. 1999 Nr. 2.

Hydén, H. & Svensson, M. (2008). The Concept of Norms in Sociology of Law, in Wahlgren, Peter (ed.) *Scandinavian Studies in Law, Law and Society*.

Kierkegaard, Sylvia Mercado (2005) *Taking a sledgehammer to crack the nut: The EU Enforcement Directive*, Computer Law & Security Report 21, pp 488-495.

Koktvedgaard, Mogens & Levin, Marianne (2004) Lärobok i immaterialrätt, 7 edition, Stockholm: Norstedts Juridik AB.

Lukes, S. & Scull, A. (1983). *Durkheim and the Law*. Oxford: Martin Robertson.

Larsson, Stefan (2005a) *Intellectual Property Rights in a Transitional Society – Internet and File Sharing from a Sociology of Law Perspective* (in Swedish.) [Musikupphovsrätten i ett samhälle under förändring – Internet och fildelning ur ett rättsociologiskt perspektiv], thesis for Master of Laws, University of Lund.

Mathiesen, T. (1973). "Inledning" i Edling, S. & Elwin, G. (red.) *Rättsociologi – om lag, konflikt och behov*. Stockholm: Wahlström & Widstrand.

Nelken, D. (1993). "The truth About Law's Truth" in *European Yearbook of the Sociology of Law 93*.

Nordell, Per Jonas (1997) *Rätten till det visuella*, Stockholm: Jure.

Pound, Roscoe (1910) Law in Books and Law in Action, in *American Law Review*, p 12-36.

Stjernquist, P. & Widerberg, K. (1989). *Rätten i samhällsbyggandet*. Stockholm: Norstedts.

Svensson, Måns (2008) *Social Norms and the Observance of Law*, [In Swedish. *Sociala normer och regelefterlevnad. Trafiksäkerhetsfrågor ur ett rättsociologiskt perspektiv*], Lund Studies in Sociology of Law.

Westkamp, Guido (2007) *The Implementation of Directive 2001/29/EC in the Member States*, Queen Mary Intellectual Property Research Institute, Centre for Commercial Law Studies Queen Mary, University of London.

Other sources

Dagens Nyheter 3 Sep 2007

Svenska Dagbladet 28 April 2009. "Nätoperatörerna kringgår inte Ipred"
http://www.svd.se/nyheter/inrikes/artikel_2805959.svd.

Cybernormer.se, 28 April 2009. <http://cybernormer.se/2009/04/28/fler-stora-operatorer-bygger-runt-ipred/>